

**COMPLAINT INVESTIGATION
CLARK COUNTY SCHOOL DISTRICT
(#CL060816)
Report Issued on September 13, 2016**

INTRODUCTION

On June 8, 2016, the Nevada Superintendent of Public Instruction received a Complaint from a Parent alleging violations of the Individuals with Disabilities Education Act (IDEA) and the Nevada Administrative Code (NAC), Chapter 388, in the special education program of a student with a disability attending school in the Clark County School District (CCSD). The Parent alleged the CCSD had failed to implement the student's individualized education program (IEP) during the 2015/2016 school year by failing to provide the accommodations of note taking, school/home communication regarding the student's progress, the use of positive reinforcement, a breakdown/clarification of assignments, small group instruction and required communications.

In addition to the allegations above, the Parent raised personnel concerns with respect to how teachers spoke with the student. The Parent was notified that the Nevada Department of Education (NDE) did not have jurisdiction to investigate the personnel concerns through the Special Education Complaint process and was encouraged to resolve those concerns at the school and district level.

The CCSD requested an extension of the timeline to respond to requests for information from the Complaint Investigation Team because of the inability to, during the summer months, contact the general education teachers who were responsible for implementing the accommodations at issue in the Complaint and who might have necessary documentation. Pursuant to the provisions of the IDEA, 34 C.F.R. §300.152(b), the NDE extended the 60 day timeline for the completion of the investigation and the issuance of its finding due to this exceptional circumstance.

All documents submitted by the Parent and the CCSD relevant to the issue in the Complaint were reviewed in their entirety in this investigation. The Complaint Investigation Team also collected and reviewed additional information as needed during the investigation. The Findings of Fact cite the source of the information determined necessary to resolve the issues in this Complaint.

COMPLAINT ISSUE

The allegations in the Complaint, further clarified during the investigation, raised the following issue under the jurisdiction of the NDE to investigate:

- Issue:** **Whether the CCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's 2015-2016 IEP(s) with regard to the provision of the following by the Math, Science, English and Reading teachers:**
- a. Notes to the student**
 - b. Positive reinforcement**
 - c. Breakdown/clarification of assignments**

- d. **Small group instruction**
- e. **Communication regarding concerns about academic performance and behavior**

FINDINGS OF FACT (FOF)

General

1. The student transferred into the CCSD at the beginning of the 2015/2016 school year with a May 20, 2015 IEP Out-of-State IEP in place. (Review of documents, Special Education Instructional Facilitator email)
2. The student had the following IEPs in effect for the 2015/2016 school year:
 - a. May 20, 2015 Out-of-State IEP (Out-of-State IEP)
 - b. November 24, 2015 Initial IEP (Initial IEP)
 - c. IEP Revisions dated January 20, 2016 and May 13, 2016.(Review of documents)
3. The allegations concerning the failure to implement the student's IEPs were with respect to the general education classes of Math, Science, English and Reading. The student was enrolled in those classes for the entire 2015/2016 school year. The classes met five days a week as follows:
 - a. Math for 50 minutes daily
 - b. Science for 52 minutes daily
 - c. English for 52 minutes daily
 - d. Reading for 51 minutes daily.(Parent, Class List)
4. The 2015/2016 school year began on August 24, 2015 and ended on June 1, 2016. There were 180 school days in the 2015/2016 school year. The student was absent for 17 of those days. (CCSD Calendar, Attendance Records, Compliance Monitor)
5. The student's general education teachers in Math, Science, English and Reading described in separate emails what they did to provide the accommodations in the student's IEPs. On July 18, 2016, the Complaint Investigation Team requested documentation of the provision of the accommodations described in the general education teachers' emails and to provide any such documentation prior to August 31st. No documentation was provided. (General education emails, Complaint Investigation Team email to CCSD Office of Compliance and Monitoring, Review of documents)
6. The Out-of-State IEP included one annual goal – to increase the student's focus. (Out-of-State IEP)
7. The Initial IEP and the IEP revisions dated January 20, 2016 and May 13, 2016 had three annual goals each of which included benchmarks or short/term objectives in the areas of: a) strengthening writing skills; b) comprehension and 3) making appropriate use of study and independent work time. (Initial IEP, IEP Revisions dated January 20, 2016 and May 13, 2016)

8. The student's Specialized Progress reports indicated on April 5, 2016 and on May 20, 2016 that "some progress was made on each of the three annual goals" that the projected progress was "some progress, Limited" and that "more time was needed on each of the goals". (Out-of-State IEP, Initial IEP, IEP Revisions dated January 20, 2016 and May 13, 2016, June 2, 2016 Specialized Progress Report)
9. The student's grades for the end of the year in the classes in which the Parent alleged the accommodations were not provided were: English-D, Math-C, Reading-F, Science-D. The poor grades were due to the student's failure to complete schoolwork both in and out of class. (Report card, emails)

Providing Notes to the Student

10. The Out-of-State IEP included an accommodation stating "copies of notes/guided notes provided". (Out-of-State IEP)
11. The Initial IEP and the January 20, 2016 IEP Revision included an accommodation that the student would be provided with a teacher or student copy of class notes as the teacher deemed necessary in the General Education Setting. (Initial IEP, January 20, 2016 IEP Revision)
12. The May 13, 2016 IEP Revision included an accommodation stating that the student would be provided with a teacher or student copy of class notes when notes were taken in the General Education Setting. (May 13, 2016 IEP Revision)
13. The Math teacher reported that when the student was absent, the student would be provided with a Xeroxed copy of the notes taken in class. During daily class notetaking time, either the Math teacher or aide would sit or stand next to student to ensure that the student was taking notes properly and effectively and to ensure the student understood the notes taken. (Math teacher report)
14. The Science teacher reported that notes were condensed and important questions on content were written on the left and an answer to the question or an explanation were in a fill-in-the blank format on the right. There was a summary portion at the bottom of the page and the student was given a question to help guide the student coming up with a summary rather than having to come up with it independently. Power Point presentations were modified to help student fill out the fill-in-the-blank with ease. Additional copies of all notes and power points that went with lessons were on Google classroom in electronic form. In addition, hard copies of papers were on the back bookshelf. (Science teacher report)
15. The English teacher reported that the student was provided a Student Writer's Packet with all the notes for the year. (English teacher report)
16. The Reading teacher reported that the student received teacher notes, as well as audio, visual and other materials to support learning on a daily basis. The student accessed the notes through the Google Classroom Website. The login directions to the Google Classroom Website were provided to the student at the beginning of the school year, at open house and to the Parent at the student's IEP meeting in September

2015. The Google Classroom Website provided all students with 24-hour access to all class materials. The Reading teacher provided a sample of teacher notes and agenda provided on the Google Classroom Website to the Complaint Investigation Team. (Reading teacher report)

17. The Parent reported that there were never any notes in the student's folder nor did she find copies of any class notes. The student indicated to the Parent that no notes were ever provided. The student did inform the Parent that one teacher handed out a student guide to all students and it was up to the students to take notes. (Parent)

Use of Positive Reinforcement

18. The Out-of-State IEP stated "reinforcement of 'on-task' or desired behaviors" as an accommodation. (Out-of-State IEP)
19. The Initial IEP and the January 20, 2016 IEP Revision included an accommodation stating that authentic positive reinforcement and praise would be provided when tasks were completed independently as opportunity presented itself in the general education environment. The May 13, 2016 IEP Revision included an accommodation stating that the student would receive authentic positive reinforcement and praise when tasks were completed independently on a daily basis in the General Education Setting. (Initial IEP and IEP Revisions dated January 20, 2016 and May 13, 2016)
20. The Math teacher reported that the student was often praised when on task and involved in the lesson. When the student was not involved it was found that humor often helped get the student back on task and engaged. (Math teacher report)
21. The Science teacher reported that the student was given specific praise when a task was completed individually. Examples of what was said included [Student], you really did a nice job today of making good use of your time and staying on task, keep it up." (Science teacher report)
22. The English teacher reported that she used the Love and logic method for positive praise. (English teacher report)
23. The Reading teachers reported that the student continually received both verbal praise and positive interactions with adults and students. When the student assisted the teachers with tasks, the student was often praised or given tangible reinforcement for the assistance. (Reading teacher reports)

Breakdown/clarification of Assignments

24. The Out-of-State IEP included three accommodations addressing the breakdown/clarification of assignments: 1) "large projects or assignments broken down/chunked into smaller tasks"; 2) "clarification and repetition" and 3) "directions read and clarified". (Out-of-State IEP)
25. The Initial IEP and the January 20, 2016 IEP Revision included accommodations stating "Repeat directions and have [student] repeat directions back to teacher when

instructions are given in the General Education Setting” and “Check for Understanding daily in the General Education Setting”. (Initial IEP, January 20, 2016 IEP Revision)

26. The May 13, 2016 IEP Revision included accommodations stating “Repeat directions and have [student] repeat directions back to teacher when instructions are given in the General Education Setting” and “Cue attention and check for understanding of direction and content daily in the General Education Setting”. (May 13, 2016 IEP Revision)
27. The Math teacher reported that many times throughout Math, she or the aide would check in with the student to clarify directions, a task or to check in to see how the student was doing. They would often ask “what are your directions?” or “Do you need help in clarifying the directions”? The student would often need help and the best way to help the student was to ask the student questions. The student would often respond, “I get it when you ask me questions.” (Math teacher report)
28. The Science teacher reported that after whole class instructions were given, the student was asked to repeat directions to see if further clarification was needed. Larger project and lab activities were already chunked into smaller sections and goals for the whole class. During class, she or the aide would work around the classroom assisting all students and asking if they needed help. (Science teacher report)
29. The English teacher did not report that she specifically provided a breakdown/clarification of assignments to the student, although she did report that she worked one on one with the student on writing projects to assist with organization and dividing paragraphs into individual sentences. (English teacher report)
30. The Reading teacher and co-teacher reported that all students in the class were given repeated directions, anchor charts, or visuals to assist them in understanding assignments. Pictures, drawings and notes were provided for students to copy. Every Monday students were given an agenda for the week and the agenda was reviewed with all the students. The Reading teacher and the co-teacher would check students for understanding of expectations, necessary materials and clarification of directions. In addition, students were given weekly times and days to receive extra help and support and students were able see one of the Reading teachers for help before school on Mondays-Thursday from 6:30-7:20 as well as during after school hours. The Reading teachers also provided a text address for a Reminder App to receive text alerts about upcoming tests and assignments and to ask for help when questions arose after school hours. A sample of a Reminder App posting was provided by one of the Reading teachers to the Complaint Investigation Team. The student was monitored to assist with maintaining on-task behavior and to provide clarification during lessons. (Reading teacher reports, Reminder App sample)
31. The Parent did not know which specific teachers failed to breakdown or clarify assignments for the student. (Parent)

Small Group Instruction

32. The Out-of-State IEP required small group instruction “(in order to increase and aid [student’s] focus/attention) re-teaching, pre-teaching, modeling, and corrective

feedback” by a general education teacher 60 minutes a month in the general education classroom. (Out-of-State IEP)

33. Although the Math, Science, English and Reading teachers all reported teaching all the students in small groups at times during their classes, there was no accommodation or other requirement in the student’s Initial and subsequent IEPs that required that the student receive small group instruction. (Initial IEP and IEP Revisions dated January 20, 2016 and May 13, 2016, Reports of Math, Science, English and Reading teachers)

Communication Regarding Academic Progress and Behavioral Concerns

34. The Parent wanted to be contacted by the school whenever there were concerns with the student’s academic progress and when there were any behavioral problems. There was no accommodation in any of the student’s IEPs for the 2015/2016 school year that teachers were required to contact the Parent whenever there was concern about the student’s academic performance. (Out-of-State IEP, Initial IEP and IEP Revisions dated January 20, 2016 and May 13, 2016)
35. There was no accommodation in the Out-of-State IEP, the Initial IEP or the IEP revision dated January 20, 2016 stating that teachers were to contact the Parent when there were any behavioral problems. (Out-of-state IEP, Initial IEP, IEP January 20, 2016 IEP Revision)
36. There was an accommodation in the May 13, 2016 IEP stating “teachers will contact parent by phone when progressive discipline reaches conference [level] with student or leave email requesting a call-back from parent to discuss student conference” in the General Education Setting. (May 13, 2016 IEP Revision)
37. The Math, Science and English teachers reported that no incidents occurred subsequent to the May 13, 2016 IEP Revision up to the end of the school year on June 1, 2016 in which there needed to be any progressive discipline or conference with the student about behavior and no notes were sent to the Parent in that regard. (Math, Science and English teacher reports)
38. One of the Reading teachers reported that around Memorial Day the Parent was contacted directly by phone to report a behavioral incident that reached conference level status. There were no other serious behavioral incidents in the class before the end of the school year on June 1, 2016. The Parent reported that she was contacted about the student’s behavior at the end of May. (Reading teacher report, Parent)

Subsequent to the Filing of the Complaint

39. At the beginning of the 2016/2017 school year, an IEP meeting was held and a behavioral intervention plan developed for the student to address behavioral problems and the failure to achieve the goals and objectives in the IEPs in effect for the 2015/2016 school year. (Assistant Principal)

CONCLUSIONS OF LAW

Issue: Whether the CCSD complied with the IDEA and the NAC, Chapter 388, in the implementation of the student's 2015-2016 IEP(s) with regard to the provision of the following by the Math, Science, English and Reading teachers:

- a. Notes to the student
- b. Positive reinforcement
- c. Breakdown/clarification of assignments
- d. Small group instruction
- e. Communication regarding concerns about academic performance and behavior.

Pursuant to the IDEA and the NAC, Chapter 388, the CCSD was required to provide the services and instruction deemed necessary for the student by the IEP Team. (NAC §388.281(6)(g), 34 C.F.R. §300.17(d)) The CCSD was also required to establish a system of records for the purpose of verifying that each student identified as a student with a disability received services appropriate to the disability pursuant to the NAC §388.215(5)(b).

Providing Notes to the Student

Although the accommodation requiring the provision of notes to the student was worded slightly differently in the student's IEPs, the student's IEPs for the 2015/2016 school year all included the accommodation that the student would be provided with a teacher or student copy of class notes in the general education setting. (FOFs #10–#12)

All of the student's teachers in the courses at issue in this Complaint reported they did provide notes to the student. Based on the report of the Math Teacher, while notes were provided, the math notes were not provided in the manner required by the IEPs. (FOFs #10–13) Based on the reports of the Science, English and Reading teachers (FOFs #14–#16), the accommodation in the student's IEP regarding notes (FOFs #10-12) may have been provided in the manner required by the IEPs in these general education classes. However, in the absence of the documentation required pursuant to NAC §388.215 to confirm the implementation (FOF #5) the Complaint Investigation Team determined that the CCSD failed to provide this accommodation consistent with student's IEPs in the Reading, English and Science general education classes.

Use of Positive Reinforcement

With regard to the accommodation of the use of positive reinforcement, the Out-of-State IEP required that the student be reinforced for "on-task" or "desired behaviors". (FOF #18) The Initial and subsequent IEPs required the student to be reinforced on a daily basis when tasks were completed independently. (FOF #19)

The Math teacher reported that the student was praised when on task, which is consistent with the student's May 20, 2015 IEP. However, there was no indication that the student was

reinforced when tasks were completed independently as required by the student's Initial and subsequent IEPs. (FOFs #18–#20)

The English teacher reported using a specific approach to providing positive praise, but did not indicate that the student received positive reinforcement as required by the student's IEPs. (FOF #22) The Reading teachers reported providing verbal praise to the student, but not for the specific behaviors required by the IEPs. (FOF #23) Consistent with the student's Initial and subsequent IEPs, the Science teacher did report providing praise to the student when a task was completed individually, but did not report the implementation of this accommodation consistent with the May 20, 2015 IEP for on-task behavior or on a daily basis as required by the student's subsequent IEPs. (FOFs #18, #19, #21)

While all of the student's teachers in the courses at issue did use positive reinforcement to some degree, based on the reports of the English, Reading and Math Teachers, the student's IEP was not implemented in the manner required in these general education classes. (FOFs #22–#24) Based on the report of the Science teacher (FOF #21), the accommodation of the use of the positive reinforcement accommodation in the student's May 20, 2015 IEP was not implemented in the manner required and it is unclear whether the use of positive reinforcement was on a daily basis as required by the student's Initial and subsequent IEPs regarding. (FOF #18)

In the absence of the documentation required pursuant to NAC §388.215, the Complaint Investigation Team determined that the CCSD failed to provide the accommodation of the use of positive reinforcement in the student's IEPs in all regards consistent with the student's IEPs (FOF #5)

Breakdown/clarification of Assignments

Although the accommodation addressing the breakdown and clarification of assignments was worded slightly differently in the student's IEPs, all of the IEPs for the 2015/2016 school year included an accommodation that assignments would be broken down and clarified for the student in the general education environment. (FOFs #25–#27) The Math, Science, English and Science teacher all reported the implementation of this accommodation in some regard:

- The Math teacher reported that he would often ask if the student understood directions and check for understanding as required by the Initial and subsequent IEPs, but he did not report that he would cue for the student's attention as required by the May 13, 2016 IEP Revision. The Math teacher did not report that large projects or assignments were broken down or that instructions were read to the student, though the teacher did indicate that he would clarify directions as required by the Out-of-State IEP. (FOFs #25–#27)
- The Science teacher reported larger projects were broken down into small chunks for the whole class and that she provided clarification and repetition to the student consistent with the student's Out-of-State IEP. She did not indicate that directions were read to the student. (FOF #28) Per the Initial and subsequent IEPs, the Science teacher reported that the student was asked to repeat directions to determine if further clarification was needed; however, there was no mention that the teacher would cue the student's attention for understanding as required by the May 13, 2016 IEP. (FOF #25, #26 and #28)

- The English teacher did not report that large projects or assignments were broken down or that instructions were read or clarified to the student as required by the Out of State IEP, though she did report working one on one with the student. She also did not report repeating directions to the student and having them repeated back as required by the Initial and subsequent IEPs (FOFs #25, #26, #29) or cuing for attention and checking for understanding as required by the May 13, 2016 IEP. (FOFs #26, #29)
- The Reading teachers reported that there was clarification and repetition as required by the Out of State IEP, but did not report that large projects or assignments were broken down into smaller tasks. (FOFs #24-#26 and #30) The Reading teachers also did not report having the student repeat back directions to them though they did report checking for understanding as required by the Initial and subsequent IEPs. (FOFs #25, #26 and #30).

Therefore, with regard to the accommodation of breaking down/clarification of assignments in the student's IEPs, while the Math, Science, English and Reading teachers each reported how they broke down and/or clarified assignments in some regard for the student, the Complaint Investigation Team determined this accommodation was not implemented in all regards consistent with the student's IEPs.

Small Groups

The student's Out-of-State IEP required small group instruction "(in order to increase and aid [student's] focus/attention) re-teaching, pre-teaching, modeling, and corrective feedback" by a general education teacher 60 minutes a month in the general education classroom. (FOF #32) While the Math, Science, English and Reading teachers all reported they provided small group instruction in their classrooms throughout the year (FOF #33), they did not report that the small group instruction was for the requisite amount of time and for the required purposes during the three months the Out-of-State IEP was in effect. (FOFs #1, #5) Therefore, the CCSD did not implement the student's Out-of-State IEP with regard to small group instruction from August 20, 2015 to November 25, 2016.

The student's Initial and subsequent IEPs did not include any requirement for small group instruction in Math, Science, English and Reading. Therefore, the CCSD implemented the student's IEP with regard to small group instruction from November 25, 2015 through the end of the 2015/2016 school year.

Conclusion

The CCSD was required to provide notes to the student, use positive reinforcement, breakdown and clarify assignments in the student's Math, Science, English and Reading general education classes in some regard in all of the student's IEPs in effect in the 2015/2016 school year and instruct the student for 60 minutes a month in a small group as required by the student's May 20, 2015 IEP. In this case, the CCSD relied solely on reports from the student's teachers that the services were provided to verify the provision of the contested services to the student.

The detailed reports of the Math, Science, English and Reading teachers were credible; however, these reports did not substantiate the provision of these accommodations consistent with the student's IEPs in all regards. In the absence of the required system of records pursuant to the NAC §388.215(5) that the accommodations were provided in all regards, the Complaint Investigation Team determined the CCSD failed to provide the contested services consistent with the student's IEPs.

Therefore, the CCSD failed to comply with the IDEA and the NAC with respect to providing notes to the student, using positive reinforcement, breaking down and clarifying assignments throughout the 2015/2016 school year and instructing the student in small groups the first three months of the 2015/2016 school year.

Communication Regarding Concerns about Academic Performance and Behavior

None of the student's IEPs in the 2015/2016 school year had the accommodation that the Parent would be contacted when there were academic problems. (FOF #34) In addition, the Out-of-State IEP, the Initial IEP and the January 20, 2016 IEP Revision did not include an accommodation requiring teachers to contact the Parent when there were behavioral problems (FOF #35).

The May 13, 2016 IEP did include an accommodation stating that the teachers would contact the parent by phone or leave an email when progressive discipline reached conference [level status] with the student in the general education setting. (FOF #36) The Math, Science and English teachers reported that there were no behavioral incidents that occurred subsequent to the May 13, 2016 IEP that rose to the conference level. (FOF #37)

The Reading teacher's reported one behavioral incident around Memorial Day when the student's behavior reached conference level status in her class. As confirmed by the Parent, the Parent was notified by phone about the student's behavior during this time period. (FOF #38) Therefore, given this consistent information, the Complaint Investigation Team determined that the requirement in the May 13, 2016 IEP with respect to contacting the Parent regarding the student's behavior was implemented.

Therefore, the CCSD complied with the IDEA and the NAC with the requirement to implement the IEP with respect to contacting the Parent when there were academic or behavioral problems.

ORDER FOR CORRECTIVE ACTION

Directed Action Plan

1. Within 30 days of the receipt of this report, the CCSD must arrange for, and complete, a meeting, individually and or collectively, of all general education teachers in the student's school responsible for implementing the student's IEP, to put into place a system of records to document the provision of each accommodation and any specialized instruction for the student. The IEP in effect at the time of the meeting,

along with a description of the system of records set up for its implementation shall be submitted to the NDE within 15 days of the meeting and no later than November 1, 2016.

2. The student is entitled to Compensatory Education of 18 hours. The Compensatory Education shall be provided in the form of tutoring in the areas of English, Science and Reading. The tutoring may be provided by school personnel and must take place after school or during days students are not in attendance at school. The Compensatory Education must be provided to the student no later than the end of the first semester of the 2016/2017 school year. The content and timeline for the delivery of the Compensatory Education may be changed if the CCSD and Parent agree to the change and provide any such agreement to the NDE at any time prior to the end of the first semester of the 2016/2017 school year.

The calculation of the Compensatory Education time was based on the failure of the CCSD to provide 60 minutes of small group instruction in the general education classroom during each of the first three months of the 2015/2016 school year as required when the Out-of-State IEP was in effect for a total of 3 hours (FOFs #1 and #32) and consideration of a fair equivalent (rounded) for the period of time the student's accommodations were not implemented in Math (50 minutes times 6) English (52 minutes times 6) and Reading (51 minutes times 6), the three areas in which the student received a grade below C in the 2015/2016 school year. (FOF #9)

The CCSD shall notify the NDE of the completion of the delivery of the Compensatory Education within 15 days school days of its completion.

Training

The CCSD is required to take corrective action to address the violations found in this Complaint investigation, specifically the CCSD failed to implement part of the student's IEPs and to maintain a system of records to provide documentation that it implemented the student's IEPs in effect for the 2015/2016 school year with regard to the accommodations in the Math, Science, Reading and English classes and the specially designed instruction of small group instruction.

Within 30 days of the receipt of this report, the CCSD must develop and submit to the NDE a proposed Correction Action Plan (CAP) to train all general education personnel in the student's school who are responsible for implementing IEPs of the necessity to implement accommodations and specially designed instruction in IEPs and set up a system of records to document their implementation.

The CAP must include a method for the CCSD to determine that the participants have mastered the contents of the training and documentation of that mastery. This CAP must be approved by the NDE prior to its implementation.

The CAP must be approved by the NDE prior to implementation. Following approval of the CAP by the NDE, it must be implemented within 45 days, and in any case, by December 15, 2016 and a report submitted to the NDE to document its implementation within 15 school days thereafter.